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June 20, 2012

VIA FACSIMILE AND U.S. MAIL

Jeff S. Jordan, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20464

Subject: MUR 6570

Dear Mr. Jordan:

This letter is submitted on behalf of Mr. Jerry Seedborg, Seedborg Campaigns, Inc. and Voter Guide Slate Cards (the "Seedborg Entities") in response to the May 3, 2012 complaint submitted by Scott Abrams, Campaign Manager for the Sherman For Congress campaign committee (the "Sherman Complaint") designated as MUR 6570.

The Sherman Complaint alleges that the Committee to Elect an Effective Valley Congressman (the "IE Committee") coordinated with Congressman Howard Berman's campaign committee, Berman For Congress, by purchasing advertising space on Mr. Seedborg's Voter Guide Slate Cards slate. Because Mr. Seedborg formerly worked for Berman For Congress, the Sherman Complaint surmises that Mr. Seedborg acted as a "common vendor" who "used or conveyed" information "about the campaign plans, projects, activities, or needs of the clearly identified candidate" in creating and/or distributing his slate mail.

The Sherman Complaint is meritless. First, there was no coordination because, in reality, Mr. Seedborg did "not use or convey" any information obtained from Berman For Congress. Mr. Seedborg had no involvement in or knowledge of Berman For Congress' slate strategy. Critically, the text used in Mr. Seedborg's slate mailer advertisement in support of Congressman Berman was supplied exclusively by the IE Committee and the mail universe to which the slates were sent was pre-selected before Mr. Seedborg learned that the IE Committee wanted to buy advertising space on his slate.

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Second, even if we assumed, counterfactually, that the allegations in the Sherman Complaint were true, there is no basis to find that the Seedborg Entities violated any law. If the slate mail advertisement were coordinated, the IE Committee's expenditure for the advertisement might be subject to the Act's contribution limits. But the Seedborg Entities did not make any contribution whatsoever. Thus, there is no theory under which a mere commercial vendor, such as the Seedborg Entities would be liable. Indeed, the Sherman Complaint concedes this point as none of the Seedborg Entities are identified as respondents.

I. BACKGROUND

Mr. Seedborg began working for the Berman For Congress committee in late December, 2011. While at Berman For Congress, Mr. Seedborg mostly handled day-to-day administrative matters, such as finding a campaign office. Importantly, Mr. Seedborg had no involvement in or knowledge of Berman For Congress' slate mail strategy (if any). Less than three months after being hired, Mr. Seedborg left Berman For Congress in March 2012, in part due to health concerns. Since leaving Berman For Congress, Mr. Seedborg has had no substantive communications with either Berman For Congress or Congressman Berman or involvement with the Berman For Congress campaign.

After leaving Berman For Congress, Mr. Seedborg returned his attention to his long established slate mail business, Voter Guide Slate Cards ("VGSC"). Mr. Seedborg has run VGSC for 20 years and VGSC is completely independent of Berman For Congress. Mr. Seedborg's slate cards provide a forum where candidates for various state, local or federal offices may purchase a limited amount of advertising space. A typical slate card will be a double-sided single page brochure that contains advertisements for four or more candidates.

In connection with Mr. Seedborg's slate business, and only after he left Berman For Congress, Mr. Seedborg was first contacted by the IE Committee who wanted to buy advertising space on the VGSC slate in support of Congressman Berman. Prior to being contacted by the IE Committee, Mr. Seedborg had no idea the IE Committee would purchase advertising space on his slate.

In designing and distributing his slate cards, Mr. Seedborg and the Seedborg Entities did not use or convey *any* information obtained from Berman For Congress. The IE Committee provided to Mr. Seedborg the text of the advertisement supporting Congressman Berman (set forth below).¹ Mr. Seedborg did not alter the text in any way.

¹ See Ex. A (copy of a Voter Guide Slate Cards slate card containing an advertisement paid for by the IE Committee).

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CD30 U.S. Representative
HOWARD L. BERMAN*
Democrats are uniting in
support of Congressman Howard
Berman! Howard Berman is
endorsed by: Governor Jerry
Brown, Senators Dianne
Feinstein and Barbara Boxer
and Congressman Henry Waxman.

Similarly, as shown above, the IE Committee was just one of many clients who purchased advertising space on Mr. Seedborg's slate. The slate mail universe used was already defined before Mr. Seedborg knew that any advertising space would be purchased in support of Congressman Berman. At no point did the Seedborg Entities convey any information to the IE Committee about Berman For Congress or its campaign strategy.

II. ARGUMENT

A. The "Seedborg Entities" Are Not "Common Vendors" Because They Did Not "Use Or Convey" Information Relating To Or Obtained From Berman For Congress In Developing The Communication As Required By 11 CFR §109.21(d)(4)(iii).

The Commission has made crystal clear that the mere use of a common vendor between a principal campaign committee and an independent expenditure committee does not give rise to a presumption of coordination:

[The Commission] disagrees with those commenters who contended the proposed standard created any "prohibition" on the use of common vendors, and likewise *disagrees with the commenters who suggested it established a presumption of coordination.*

The final rules in 11 CFR 109.21(d)(4) restrict the potential scope of the "common vendor" standard by limiting its application to vendors who provide specific services that, in the Commission's judgment, are conducive to coordination between a candidate or political party committee and a third party spender. But under this final rule, even those vendors who provide one or more of the specified services are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders ... *The final rule does not require the use of any confidentiality agreement or ethical screen because it does not presume coordination from the mere presence of a common vendor.*²

As there is no presumption of coordination from the use of a common vendor, the linchpin of the Sherman Complaint is its claim that the Seedborg Entities "used or convey[ed] ... information about the campaign plans, projects, activities, or needs of the clearly identified candidate...and that information is material to the creation, production, or distribution of the communication."³ If the Seedborg Entities did not "use or convey" information obtained from the Berman For Congress campaign, the Sherman Complaint must be dismissed.⁴

As explained above the facts conclusively show that the Seedborg Entities did not "use or convey" any information from Berman For Congress:

² 68 Fed. Reg. at 436-7.

³ Sherman Complaint at 6.

⁴ See 11 CFR §109.21(d)(4)(iii).

- Mr. Seedborg had no involvement in or knowledge of Berman For Congress' slate strategy (if any). The Sherman Complaint points to no evidence that Mr. Seedborg had access to any information that was material to the slate mailer in question. Mr. Seedborg left Berman For Congress after less than three months and had no substantive communications with Berman For Congress or involvement in the Berman For Congress campaign since leaving. In short: the Seedborg Entities had no relevant information to use or convey that could have affected the slate mailer⁵;
- Prior to leaving Berman For Congress, the Seedborg Entities had no communication with the IE Committee and the Seedborg Entities had no knowledge that the IE Committee would ask to purchase advertising space on Mr. Seedborg's slate;
- The Seedborg Entities never discussed anything relating to the Berman For Congress campaign strategy with the IE Committee;
- Dispositively, the text in the advertising space paid for by the IE Committee was created and supplied exclusively by the IE Committee and was not altered by the Seedborg Entities; and
- The mail universe and the timing of the distribution of the slate cards were predetermined and were not in any way affected by the IE Committee's purchase of advertising space in Mr. Seedborg's slate.

Because the Seedborg Entities did not "use or convey" any information obtained from Berman For Congress in creating or distributing the slate mailer, the Sherman Complaint must be dismissed.

⁵ To be a "common vendor," under 11 CFR § 109.21(d)(4)(ii), the Seedborg Entities would have needed to provide one or more of the services set forth in 11 CFR § 109.21(d)(4)(ii)(A)-(I) to Congressman Berman or Berman For Congress. The Sherman Complaint does not identify any evidence that any of the Seedborg Entities performed any of those tasks. Indeed, as reflected in the Berman For Congress itemized disbursement forms, Mr. Seedborg and Seedborg Campaigns, Inc. provided "administrative services" to Berman For Congress, such as locating and opening the campaign headquarters. The Seedborg Entities had, for instance, no understanding whatsoever of Berman For Congress' slate strategy. Because the Seedborg Entities involvement in the Berman For Congress was primarily administrative in nature and there is no evidence that the Seedborg Entities took part in any of the activities set forth in 11 CFR § 109.21(d)(4)(ii)(A)-(I), the Sherman Complaint should also be dismissed for failing to satisfy 11 CFR § 109.21(d)(4)(ii).

B. Even If The Allegations In The Sherman Complaint Were True, The Seedborg Entities Have Committed No Violation Of Law.

The Sherman Complaint essentially boils down to a coordination claim. As explained above, this claim fails because there was no coordination because the Seedborg Entities did not use or convey any information from the Berman For Congress campaign in the state mailen. But even if its allegations were correct, the Sherman Complaint does not even allege much less demonstrate that Seedborg Entities violated any law.

Tellingly, none of the Seedborg Entities are identified as respondents in the Sherman Complaint.⁶ This is for good reason. If the communication in question were coordinated, which it was not, the contribution would be subject to the Act's contribution limits. But the Seedborg Entities did not make any contribution to Berman For Congress or the IE Committee much less one in excess of the contribution limits. The Sherman Complaint does not even attempt to claim the Seedborg Entities committed any violation of law. Because no violation was committed by the Seedborg Entities even if the facts of the Sherman Complaint are true, the General Counsel should recommend that no further action be taken against the Seedborg Entities.⁷

Indeed, because the Seedborg Entities were not identified as respondents in the Sherman Complaint, the FEC's own rules prohibit it from proceeding against the Seedborg Entities. MUR 6570 was initiated by the Sherman Complaint pursuant to 11 CFR §114. In accord with 11 CFR § 111.4(d)(1), the Sherman Complaint identified "as a respondent each person or entity who is alleged to have committed a violation." Under 11 CFR § 111.7(a), "the General Counsel may recommend to the Commission whether or not it should find reason to believe that a *respondent* has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction." Because the Seedborg Entities are not "respondents," and because this is a complaint-generated matter, the General Counsel is not permitted to recommend that the Commission find reason to believe that the Seedborg Entities committed a violation.

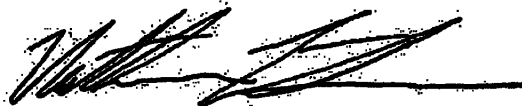
For the foregoing reasons, the Seedborg Entities respectfully request that the Sherman Complaint be dismissed.

⁶ Sherman Complaint at 1.

⁷ 11 CFR § 111.7(a).

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nathan Lowenstein', with a long horizontal flourish extending to the right.

Nathan Lowenstein

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EXHIBIT A



YES on Prop 29* A citizens oversight committee will ensure funds go directly to California research doctors and scientists working on cures, not to politicians.
www.YesProp29.org

**Election Day is Tuesday
June 5th, 2012**

Polls Open 7am - Close at 8pm

Prsrt Std
U.S. Postage
PAID
THS

[illegible]

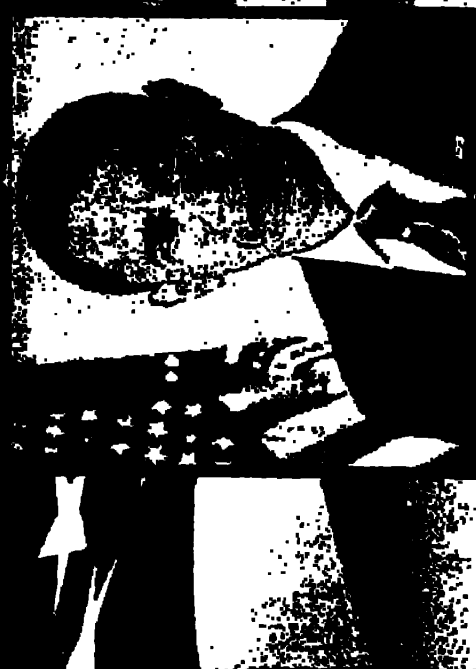
**THE YOUNG FAMILY
25345 MUREAU RD
CALABASAS CA 91302**

Ինքնաշարժիչ զինվորական զորքերի համակարգիչում

<p>CD38 U.S. Representative HOWARD L. BERMAN* Democrats are uniting in support of Congressman Howard Berman! Howard Berman is endorsed by: Governor Jerry Brown, Senators Dianne Feinstein and Barbara Boxer and Congressman Henry Waxman.</p>	<p>Judge of the Superior Court, # 10 SANJAY T. KUMAR* "Model Jurist," Rated "Exceptionally Well Qualified" by Bar Association. Endorsed by LA Times, hundreds of Judges, Police Organizations, Dist Atty & Sheriff. Website: www.KumarForJudge.com</p>
<p>AD45 Member of the State's Assembly BOB BLUMENFIELD* "Re-elect the official Democratic candidate for Assembly. Endorsed by the Democratic Party." -- Agl Kessler, Chair, Democratic Party of San Fernando Valley. www.BobForAssembly.com</p>	<p>Judge of the Superior Court, # 65 ANDREA C. THOMPSON* Sex Crimes Prosecutor for County. Experienced and Fair. Endorsed by LA Times, Victims Rights & Police Organizations. Rated "Well Qualified" by Bar Association. Visit: www.ThompsonForLAJudge.com</p>
<p>Judge of the Superior Court, # 3 CRAIG GOLD* Deputy District Attorney. Experience, Knowledge, Sound Judgment - Dedicated to Public Safety & Justice for All in the courts. Equal Justice despite economic or other disadvantages. www.CraigGoldForJudge.com</p>	<p>Judge of the Superior Court, # 114 ERIC HARMON* Rated "Well Qualified," L.A. County Bar. Endorsed by L.A. Times, L.A. County Democratic Party, Congresswoman Hahn, Councilman Koretz, Teamsters. www.HarmonForJudge.com</p>

2012 PRIMARY ELECTION RECOMMENDATIONS

BARACK OBAMA
For President



BARACK OBAMA
Democratic President of The United States

The President is taking aggressive steps to put Americans back to work and create an economy where hard work pays and responsibility is rewarded.

DIANNE FEINSTEIN
For U.S. Senator



DIANNE FEINSTEIN
Democratic United States Senator

Dianne Feinstein has built a reputation as an independent voice, working with members on both sides of the aisle to find common-sense solutions to the problems facing California and the Nation.